N THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2646 OF 2004

Balasaheb Ganpat Agawame & Anr. ... Petitioners

V/s

Madan Madhav Purandare & Anr. ... Respondents

Mr. Sanjeev J. Rairkar for petitioners

Shri Nitin P. Deshpande for respondent No.1

Shri A.M. Shingarpure, APP for the State.

Coram : V.M. Kanade, J.

Dated : 15/04/2005.

P.C. :-

1 I have heard the learned counsel for petitioners, respondent No.1 and APP for the State.

2 The petitioners are challenging the order of process of issuance passed by Judicial Magistrate First Class Ct. No.8,Pune on the complaint No.4 of 1999. By the said order ated 15/12/2004 the trial court has observed that prima facie case has been made under sections 419,420,465,467,468 read with section 109, 84 of the Indian Penal Code. It is submitted by the learned counsel on behalf of the petitioners that from the perusal of the complaint it can be seen that no offence under the aforesaid sections to have been committed by the

petitioner. It is further submitted that the trial court has not applied its mind nor has considered the material which was available in the proper perspective. It is further submitted that the Magistrate has failed to take into consideration the police report dated 12/1/2000. It is further submitted that, according to the complainant himself, the documents were produced in the proceeding before the Charity Commissioner and, therefore, the proceeding will not come within the purview of the provisions of section 195(1)(b)(i) of the Criminal Procedure Code. It is further submitted that the dispute in question is of civil nature and thus the criminal complaint is not maintainable. It is not possible to accept the submission made by the learned counsel for the petitioners at this stage while exercising the inherent powers of this court under section 482 of the Code.

3 The petitioners however shall be at liberty to apply before the learned Judicial Magistrate First Class, Pune under section 245 of the Code and seek discharge. All the questions which are raised in this petition are kept open and the trial court shall consider the application of the petitioner, if made under section 245 of the Code as expeditiously as possible on merits and in accordance with law. With these directions, criminal writ petition is dismissed.

(V.M.Kanade,J.)